FILE COPY

SEP 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 9.

HUGH W. GRANT, RECEIVER OF THE STRUTHERS FURNACE COMPANY,
Petitioner,

vs.

A. B. LEACH & COMPANY,
Respondent.

MOTION OF HUGH W. GRANT, TRUSTEE IN BANKRUPTCY TO INTERVENE AS PARTY PLAINTIFF.

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DAVID F. KENNEDY,
Youngstown, Ohio,
Of Counsel.

TOOTHAKER & RODENFELS, Law Printers, Columbus, Ohio.

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No. 9.

HUGH W. GRANT, RECEIVER OF THE STRUTHERS FURNACE COMPANY,

Petitioner,

vs.

A. B. LEACH & COMPANY,

Respondent.

MOTION FOR LEAVE TO INTERVENE AS PARTY PLAINTIFF.

May it Please the Court:

The undersigned, as counsel for Hugh W. Grant, trustee, respectfully moves this Honorable Court for leave to intervene in this case as party plaintiff for the following reasons:

1. The Struthers Furnace Company was adjudicated

a bankrupt on the eighteenth day of April, 1927, by the District Court of the United States at Cleveland, Ohio.

2. This applicant was appointed trustee in bankruptcy on the tenth day of July, 1929.

3. Although some question is made of the right of the petitioner to bring this action, it must be conceded that a right of action exists in either the receiver or in this trustee for the benefit of creditors as well as stockholders.

4. The rights, obligations and duties of the state court receiver and the trustee in bankruptcy are identical for the purposes of this suit.

5. The intervention of your applicant as a party plaintiff in this suit will avoid a multiplicity of suits and will obviate the necessity of instituting an original action in the event that it should be held that the state court receiver had no authority to institute this action.

6. Your applicant believes that the receiver has a meritorious cause of action and that the conduct of the company was unlawful and fraudulent as to the creditors and stockholders of the company.

Certified copies of the application filed in the United States District Court by the trustee seeking leave to file a motion to intervene in this suit, together with order of the court thereon, are attached hereto, marked "Exhibit A" and "Exhibit B."

It is therefore respectfully requested that an order be

entered granting your applicant leave to intervene as a party plaintiff and leave to file a brief on the merits.

Respectfully submitted,

JAMES P. WILSON
A. M. HENDERSON
.....,

Counsel for Hugh W. Grant, Trustee.

.....,

Of Counsel.

I, A. M. Henderson, counsel for the motioner in the above entitled cause, do solemnly swear that the facts recited in the foregoing "motion to intervene" are true to the best of my knowledge and belief.

A. M. HENDERSON
.....,

Counsel for Hugh W. Grant, Trustee.

Sworn to and subscribed before me this ...13th... day of September..., 1929.

KNOWLES WYATT
.....,

Notary Public.

"EXHIBIT A."

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 13419 in Bankruptcy — In the Matter of The Struthers Furnace Company, a Corporation, Bankrupt.

Application of Trustee to Intervene in Suit.

(Filed August 22, 1929.)

Now comes Hugh W. Grant and respectfully represents to the court that he is the duly appointed, qualified and acting trustee in bankruptcy in the above entitled matter, having been so appointed by one Paul E. Carson, referee in bankruptcy, on July 10, 1929. Further, your petitioner represents that on the fifth day of August, 1925, he was the duly appointed, qualified and acting receiver of The Struthers Furnace Company, having received his said appointment from the Court of Common Pleas of Mahoning county, Ohio, on the twentieth day of January, 1925; that in pursuance of and in conformity with the order of the said state court of Ohio he instituted, on the said August 5, 1925, in the Court of Common Pleas of Mahoning county, Ohio, a suit against A. B. Leach & Company, Inc., seeking to compel the said defendant to surrender and deliver back to The Struthers Furnace Company certain bonds of The Struthers Furnace Company which had been delivered to the said A. B. Leach & Company, Inc., in exchange for preferred stock of the company and without other consideration, which said transaction he alleged to be unlawful and in fraud of the rights of the other stockholders.

Your petitioner further represents that said suit terminated in his favor and that this court as of March 8, 1926, entered judgment upon its journal in favor of the plaintiff against said A. B. Leach & Company, Inc., in the sum of $312,375.00; that upon this judgment an appeal was allowed and perfected as of April 21, 1926, which said appeal resulted in a reversal of the judgment of this court by the Circuit Court of Appeals of the United States sitting at Cincinnati in a judgment entered as of July 11, 1928. Your petitioner now represents that said suit is pending in the Supreme Court of the United States upon a writ of certiorari and is docketed in that court under case No. 479, and that there is a serious question raised as to his right as a state receiver to have originally brought the said action; that he believes that the cause as stated in the petition is just and meritorious; that he believes that the rights and duties of the state receiver and of the trustee in bankruptcy are identical for the purposes of this suit; that it is to the interest of the creditors of this bankrupt company to secure a reversal of the judgment of the United States Court of Appeals and an affirmance of the judgment of this court, and lastly your petitioner believes that he is a proper party plaintiff in this action; that he should be joined as party plaintiff with the receiver so that the question of the authority of the state court receiver to bring this action may be removed, to the end that this cause may be heard upon its merits in furtherance of equity and justice.

Wherefore, your petitioner prays that an order be en-

tered granting leave to him to file a motion in the Supreme Court of the United States asking leave to become a party plaintiff in the said suit by intervention.

Respectfully submitted,

Hugh W. Grant,
Trustee.

The United States of America, Northern District of Ohio, ss.:

I, B. C. Miller, clerk of the District Court of the United States, within and for said district, do hereby certify the foregoing to be a true copy of the application for leave to become a party plaintiff in the above entitled cause in said court, and that the same is correctly copied from the original now on file in my office.

Witness, my official signature and the seal of said court, at Cleveland, in said district, this twenty-sixth day of August, A. D. 1929 and in the 154th year of the Independence of the United States of America.

B. C. Miller,
Clerk,

[Seal.]

By Warner B. Ragatz,
Deputy Clerk.

"EXHIBIT B."

In the District Court of the United States for the Northern District of Ohio, Eastern Division.

No. 13419 in Bankruptcy — In the Matter of The Struthers Furnace Company, a Corporation, Bankrupt.

Journal Entry.

(Filed August 22, 1929.)

This day this matter came on for hearing upon the application of the trustee for an order granting leave to file a motion in the Supreme Court of the United States in case No. 470 for leave to intervene as party plaintiff, and the court being fully advised in the premises finds that the representations of the petitoner are true and that the prayer should be granted.

It is therefore ordered that the petitioner proceed to make application in the Supreme Court of the United States for leave to become a party plaintiff by intervention in cause No. 479.

S. H. West,
Judge of the District Court of the United States.

The United States of America, Northern District of Ohio, ss.:

I, B. C. Miller, Clerk of the District Court of the United States, within and for said district, do hereby certify the foregoing to be a true copy of the order granting leave to become a party plaintiff in the above entitled cause in said court, and that the same is correctly copied from the original now on file in my office.

Witness, my official signature and the seal of said court, at Cleveland in said district, this twenty-sixth day of August, A. D. 1929 and in the 154th year of the Independence of the United States of America.

B. C. Miller,
Clerk,
By Warner B. Ragatz,
Deputy Clerk.

[Seal.]